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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/823,701	03/30/2001	Kenneth W. Aull	15-0225	7427

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EXAMINER	
SCHUBERT, KEVIN R	
ART UNIT	**PAPER NUMBER**
2137	

DATE MAILED: 04/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action. Before the Filing of an Appeal Brief	Application No. 09/823,701	Applicant(s) AULL, KENNETH W.	
	Examiner Kevin Schubert	Art Unit 2137	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 29 March 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: _____.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

EMMANUEL L. MOISE
SUPERVISORY PATENT EXAMINER

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant argues the 103(a) rejection of claim 1 under Yacobi in view of Texas DPS. Particularly, Applicant reiterates arguments made in the previous remarks (submitted 12/1/05). Examiner notes that these arguments have already been addressed (see action mailed 2/15/06, page 7 line 3 to page 8 line 4).

Furthermore, Applicant addresses Examiner's remarks regarding the non-analagous art issue. Specifically, Applicant cites the court case Wang Lab Inc. v Toshiba Corp 993 F.2d 858, 861, 26 U.S.P.Q. 2d 1767 (Fed Cir 1993) and alleges that Texas DPS is non-analagous because a) it is not within the same general field as applicant's claimed invention and b) it is not reasonably pertinent to the problem solved by the claimed invention. Regarding a), Applicant submits that "claim 1 and Texas DPS are not in the same field of endeavor because they relate to different forms of identification" (Remarks, page 5, lines 4-5). It appears that Applicant reaches this conclusion because, in Wang, two different types of memory were ruled to be non-analagous. Examiner notes that the Wang case is outside the scope of the issue between Texas DPS and claim 1. The Wang case contemplates the issue of whether a type of memory (e.g. SRAM of patentee Allen-Bradley) is analagous to a second type of memory (e.g. DRAM of Wang) considering the fact that the memory in Wang was constructed as compact memory in accordance with minimizing size so as to be used on a personal computer and not in large industrial machinery as in Allen-Bradley. The memory modules, themselves, were non-analagous as the scope of the two types of memory in the particular situation were non-overlapping. In contrast, Examiner's conclusion of analagous art in the instant case is based on whether the METHOD of claim 1 is analagous to the method of Texas DPS. In contrast to Applicant's arguments, Examiner asserts that both the claimed invention and Texas DPS are within the same field of endeavor because they both are associated with methods of identification issuance (office action mailed 2/15/06 page 8, lines 10-11). Even further, Examiner submits that both methods seek identification issuance to authorized users and to curtail identification spoofing. It is the methods, themselves, which are particularly pertinent to the instant analagous art issue and not the particular end result identification forms (e.g. license, certificate). Thus, even if Wang's dissimilar memory issue were to support a conclusion that a license and a certificate are non-analagous forms of identification, such a conclusion would not render the two identification issuance methods non-analagous.

Regarding b), in response to Examiner's previous comments that Texas DPS is reasonably pertinent to the particular problem solved because it addresses curtailing identification spoofing, Applicant asserts the following:

"Thus, assuming arguendo that both Texas DPS and claim 1 both relate to preventing ID spoofing, they are still not in the same field of endeavor, because one of ordinary skill in the art would not use the teachings of a driver's licence administration procedure (Texas DPS) to implement a method of preventing ID spoofing in a PKI (claim 1). Thus, Texas DPS is non-analagous art with respect to claim 1" (Remarks, page 5, lines 17-22).

In short, Applicant appears to be arguing that Texas DPS is not reasonably pertinent to the particular problem of claim 1 because it is not in the same field of endeavor. Examiner respectfully disagrees with such reasoning. Analagous art is established if either the prior art reference is in the same field of endeavor OR if the prior art reference is reasonably pertinent to the particular problem solved. A situation in which a prior art reference is not in the same field of endeavor as the claimed invention does NOT, by itself, preclude the prior art reference from being reasonably pertinent to the particular problem solved. Accordingly, Applicant's argument is not persuasive.

Applicant further argues the 103(a) rejection of claim 5 by reiterating the remarks presented 12/1/05. Examiner notes that these remarks have already been addressed (see action mailed 2/15/06 page 9, lines 4 to 26).